

0287
Department of Ecology
Water Quality Program
DEC 17 2004

LAW OFFICES
MORISSET, SCHLOSSER, JOZWIAK & MCGAW
A PROFESSIONAL SERVICE CORPORATION

REGINA M. CUTLER (WA, OR)
FRANK R. JOZWIAK (WA)
KYLE A.M. MCGAW (WA, OK)
MASON D. MORISSET (WA)
THOMAS P. SCHLOSSER (WA)
ROB ROY SMITH (WA, OR, ID)

OF COUNSEL
SHARON I. HAENSLY (WA)
COMPTROLLER
M. ANN BERNHEISEL

1115 NORTON BUILDING
801 SECOND AVENUE
SEATTLE, WA 98104-1509

TELEPHONE: (206) 386-5200
FACSIMILE: (206) 386-7322

WWW.MSAJ.COM

December 16, 2004

Sent by electronic mail, facsimile, and first class mail

Ken Koch
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
facsimile (360) 407-6426
303d@ecy.wa.gov

Re: Skokomish Tribe's comments on Ecology's revised Water Quality Assessment for
2002/2004

Dear Mr. Koch:

LISTING ID: 6197

On behalf of the Skokomish Tribe ("Tribe"), we submit these comments on Ecology's revised Water Quality Assessment for 2002/2004 ("~Assessment"). The Tribe is disappointed that Ecology has decided remove the North Fork from the §303(d) list, to relegate it to a

category without a compliance plan or compliance deadlines, and to not address the specific comments in our letter dated September 23, 2004, which commented on Ecology's preliminary draft. As we discussed in our earlier letter, the Clean Water Act dictates that low flows caused by dams are pollutants, directly result in the discharge of other pollutants, and cause violations of water quality standards for criteria such as dissolved oxygen and temperature.

Ironically, while Ecology has removed the North Fork from the §303(d) list, it has added to the § 303(d) list nine new water body segments in southern Hood Canal for violating dissolved oxygen standards. As Ecology is aware, numerous studies demonstrate the connection between the Cushman hydroelectric project, increased flooding, and the filling in of the estuary and delta. Our September 23, 2004, letter listed some of these studies, including those authored by oceanographer Dr. David Jay. It makes no sense for Ecology to list southern Hood Canal, whose pollution is attributable to some degree to the Cushman Project, while de-listing the North Fork.

Moreover, Ecology's own data makes clear that the Skokomish River watershed and estuary remains unhealthy, and that the Skokomish watershed's problems are largely due to the Project's diversion of nearly half of the flow out-of-watershed to Hood Canal. Ecology still lists the North Fork as violating parameters of instream flow, temperature, dissolved oxygen and fecal coliform; and the mainstem Skokomish as violating fecal coliform, pH, ammonia-N, dissolved oxygen, pH and

temperature.

Ken Koch
Department of Ecology
December 16, 2004
Page 2

We respectfully urge Ecology to reinstate the North Fork on the § 303(d) list and take all other necessary action to bring the North Fork, mainstem and estuary into compliance with the applicable water quality standards.

Sincerely yours,
MORISSET, SCHLOSSER, JOZWIAK &
McGAW

s/ Mason D. Morisset

Mason D. Morisset

Cc: Joan Marchioro, Esq., Assistant Attorney General, Ecology
Keith Dublanica, Skokomish Natural Resources
Dave Herrera, Skokomish Fisheries
Marty Ereth, Skokomish Fisheries
Brian Collins, Esq., Skokomish Reservation Attorney